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July 23, 1999

REC'D TN
REGULATORY AUTH.
Guy M. Hicks
General Counsel

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OFFICE OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition of Time Warner Telecom of the Mid-South, LP for Mediation With
BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of
1996*
Docket No. 99-00500

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response to Petition for Mediation and Motion to Consolidate. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,


Guy M. Hicks

GMH:ch
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

REC'D TN
REGULATORY /

'99 JUL 23 PM

In Re: *Petition of Time Warner Telecom of the Mid-South L.P. for Mediation With
BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act
of 1996* OFFICE OF
EXECUTIVE SEC

Docket No. 99-00500

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO PETITION FOR MEDIATION
AND MOTION TO CONSOLIDATE

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its response to the Petition for Mediation and Motion to Consolidate filed by Time Warner Telecom of the Mid-South, L.P. ("Time Warner"). Although BellSouth does not oppose Time Warner's petition for mediation, Time Warner's motion to consolidate the mediation with the arbitrations involving ICG Telecom Group, Inc. ("ICG") and ITC^DeltaCom, Inc. ("DeltaCom") should be denied because it is procedurally improper and violates the procedural rules of the Tennessee Regulatory Authority ("Authority").

Section 252(a)(2) of the Telecommunications Act of 1996 permits any party negotiating an interconnection agreement to "at any point in the negotiation, ask a state commission to participate in the negotiation and mediate any differences arising in the course of the negotiation." Time Warner has requested that the Authority mediate its differences with BellSouth, and BellSouth does not oppose Time Warner's request. However, Time Warner's Petition does not accurately set forth the issues in dispute. BellSouth has been negotiating with Time Warner for some time, and to BellSouth's knowledge, only two issues remain unresolved. The first issue concerns compensation for dial-up calls to Internet Service Providers (Time Warner's Issue No. 1), and the second issue involves whether BellSouth must provide Time

Warner's directory listings to third party publishers (Time Warner's Issue No. 3). The other issues identified by Time Warner in its Petition were never discussed during contract negotiations, let alone been a source of disagreement between the parties. Thus, three of the five allegedly "unresolved" issues are not issues in the negotiations at all.

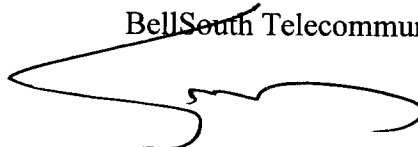
Assuming the Authority decides to mediate, however, there is no legal basis for Time Warner's request that such mediation be consolidated with the ICG and DeltaCom arbitrations. The Authority's procedural rules only allow the consolidation of "arbitrations." Rule 1220-1-3-.09 expressly provides that "[w]hen more than one arbitration is pending before the Authority and the arbitrations involve common questions of law or fact, the Authority may, to the extent practical, order *such arbitrations to be consolidated*." (emphasis added). Here, Time Warner has not filed a petition for arbitration (and is not currently eligible to do so under the Federal Telecommunications Act), but rather is seeking to consolidate a mediation with an arbitration, which the rules do not permit. The Authority's role as mediator and arbitrator is vastly different, as the Authority itself has recognized. *See Order Denying The Petition Of The Consumer Advocate To Intervene, In re: Interconnection Negotiation Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252, Docket No. 96-01152, at 2 (Sept. 11, 1996)* (arbitration "is a method of encouraging and facilitating the entering into interconnection agreements permitted by the Federal Telecommunications Act of 1996 that is completely alternative to, not only a contested proceeding, but also negotiation and mediation ...").¹

¹ Time Warner appears to be laboring under a serious misimpression that the Authority has ordered a process in the ICG and DeltaCom arbitrations that is "tantamount to a mediation," which is simply not the case. Petition ¶ 4. The Authority's Notice of Pre-Arbitration Conference in the ICG arbitration, for example, makes no mention of "mediation," but rather directs the parties to assist the Authority in "clarifying" the issues and restating the issues "in a clear and concise format so that a decision may be reached by the arbitrators in a more timely manner."

Although couched as a motion for consolidation, Time Warner is really seeking to intervene in the ICG and DeltaCom arbitrations in order to, in Time Warner's words, "avoid unnecessary and duplicative effort." Petition ¶ 5. The Authority's rules are dispositive of this issue as well. Specifically, Rule 1220-1-3-.10 provides that "[t]he Authority will not accept or grant petitions for intervention in any arbitration conducted pursuant to Section 252 of the Federal Telecommunications Act." Even before adopting this rule, the Authority refused to allow third parties to intervene in pending arbitrations. *See Order Denying The Petition Of The Consumer Advocate To Intervene, In re: Interconnection Negotiation Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*, Docket No. 96-01152 (Sept. 11, 1996). Time Warner's motion for "consolidation" is a request for intervention by another name and should be denied.

Respectfully submitted,

BellSouth Telecommunications, Inc.



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As the Authority's notice makes clear, it is not the Authority's "intent to compromise the positions or requests of the parties."

CERTIFICATE OF SERVICE

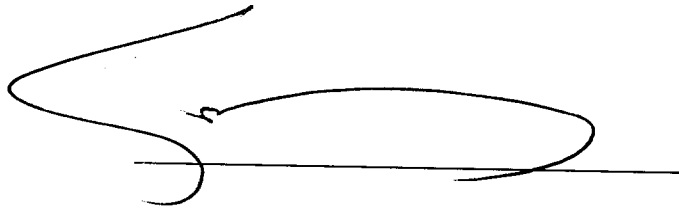
I hereby certify that on July 23, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Richard Collier, Esquire
Tennessee Regulatory Authority
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- ☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Charles B. Welch, Esquire
Farris, Mathews, et al.
511 Union St., #2400
Nashville, TN 37219

A handwritten signature in black ink, appearing to be "Charles B. Welch", written over a horizontal line.